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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
10

11 UNITED STATES OF AMERICA,  
12 Plaintiff,  
13 v.  
14 KENNETH BASH, et al.  
15 Defendants.

No. 1:20-cr-0238 JLT SKO

**DEFENDANT KENNETH BASH'S  
SUPPLEMENTAL REPLY TO  
GOVERNMENT OPPOSITION TO CO-  
DEFENDANT CLEMENT'S MOTION FOR  
DISCOVERY (Doc. 725)**

**DATE:** August 30, 2023  
**TIME:** 1:00 p.m.  
**COURT:** Magistrate Oberto  
(In person proceeding)

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20 Mr. Bash submits the following reply to the government's opposition to Mr. Clement's  
21 discovery motion which he joined in part.

22 **Request A-Relevant Institutional Records**

23 Defendant Kenneth Bash previously moved for disclosure of prison investigation and  
24 medical records of victim V-8's stabbing. The District Judge denied this motion without prejudice  
25 upon the government's representations that the government would "soon" provide it to the  
26 defense. They have not yet been provided.

27 These records are essential to the defense claim that no one conspired to kill V-8 as  
28 alleged in the indictment. He was "checked" for non-payment of a drug debt. "Checking" is a

1 term for a non-lethal stabbing of an inmate as a warning. The government is aware of this practice  
2 from various recorded phone conversations provided to the defense as discovery.

3 **Request B**

4 Defendant Bash seeks discovery of reports and wiretaps of his alleged involvement in the  
5 arson and attempted robbery he is accused of while he was in prison.

6 **Request C-Disclosure of Informants**

7 Mr. Bash requests the disclosure of the identity of people claiming his involvement in the  
8 violent crimes alleged against him. His counsel has been provided with the identities of the  
9 attempted Alabama robbery victims and the identity of the attempted victim of the arson, but not  
10 with the identities of witnesses to his alleged involvement. The government is not entitled to a  
11 presumption that a source is confidential whenever the source provides information to the FBI. It  
12 must lay a foundation for that presumption, which can then be weighed against the needs of the  
13 defense.

14 Defendant wishes to emphasize that witnesses to a crime are the property of neither the  
15 prosecution nor the defense. “Both sides have an equal right and should have an equal  
16 opportunity to interview them” (United States v. Cadet (9<sup>th</sup> Cir., 1084) 72 F.2d 1453, 1469, 1470).

17 **Request D-Cooperating Witness Agreements**

18 As to any witness identity discoverable under Request C, defendant requests that any  
19 cooperating agreement be provided.

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21 **CONCLUSION**

22 Mr. Bash submits that it is the government’s burden to lay the factual foundation as to  
23 why each and every percipient witness to each crime charged should not be disclosed. Included  
24 within that showing should be what facts distinguish disclosure now from disclosure at trial. If the  
25 government asserts that such a showing has been made to the court under seal, defendant requests  
26 that the document docket number(s) pertaining to witnesses against each defendant be identified  
27 so Mr. Bash may effectively seek in camera review.

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1 Absent a factual showing as to each percipient witness as to why each's identity and  
2 location should remain undisclosed there is no balancing of interests, and the witnesses should be  
3 ordered disclosed (United States v. Cadet, supra at 727 F.2d 1469).

4 As to the remaining issues raised by Mr. Clement, Mr. Bash joins in his arguments in  
5 support of discovery.

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7 Dated: August 8, 2023

Respectfully submitted,

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9 /s/ W. Scott Quinlan  
10 W. SCOTT QUINLAN, Attorney for  
11 Defendant KENNETH BASH  
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